

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion is respectfully requested.

After entry of the foregoing amendment, Claims 1-13 are pending in the present application. Claims 1, 5, 6, and 13 are amended, without introduction of new matter, by the present amendment.

In the outstanding Office Action, Claims 1-13 were rejected under 35 U.S.C. 102(e) as anticipated by U.S. Patent No. 6,734,477 to Moise et al. (hereinafter "Moise '477"); Claims 5 and 6 were rejected under 35 U.S.C. 103(a) as unpatentable over Moise '477 in view of U.S. Patent No. 6,534,809 to Moise et al. (hereinafter "Moise '809"); and Claims 9 and 10 were indicated as allowable if rewritten to include all limitations of their base claim and intervening claims.

Applicants note with appreciation the indication of allowable subject matter; and the withdrawal of the prior election of species requirement.

Turning now to the rejection of Claims 1-13 under 35 U.S.C. 102 as anticipated by Moise '477, that rejection is respectfully traversed.

Amended independent Claim 1 recites "a second via formed in an overlying wiring layer stacked on the predetermined wiring layer, the second via being formed on the first via and the second via being connected to a wiring formed in the overlying wiring layer." Thus, the second via of Claim 1 is connected to a wiring; and both the second via and the wiring are formed in the same overlying wiring layer. Claims 2-12 depend from Claim 1.

Amended Claim 13 recites "an upper wiring layer including an interlayer insulating film stacked on the predetermined wiring layer, a second via formed in the interlayer insulating film, connected to the first via, and formed to be thinner than the first via, and a second wiring connected to the second via and buried in a surface portion of the upper wiring

layer.” Thus, the second via of Claim 13 is connected to a second wiring; and both the second via and the second wiring are formed in the same upper wiring layer.

The outstanding Office Action cites Figure 1 of Moise ‘477 as teaching the features of Claims 1 and 13. The Office Action appears to cite first and second conductive portions, which are stacked on the hard mask layer 66 of the capacitor formed by components 58, 60, 62, 64, and 66, as teaching the claimed first and second vias, respectively. However, the second conductive portion, which is formed in the first metal level 18 (cited as teaching both the overlying wiring layer of Claim 1 and the upper wiring layer of Claim 13), is not connected to a wiring formed in the first metal level 18. Thus, as the second conductive portion is not connected to a wiring formed in the same layer as the second conductive portion, the second conductive portion does not teach the claimed second via.

In addition, the second conductive portion does not provide a vertical electrical connection. Thus, the second conductive portion does not teach a “via” as interpreted by one skilled in the art.

Accordingly, for the above reasons, Applicants respectfully request that the rejection of Claims 1-13 under 35 U.S.C. 102(e) as anticipated by Moise ‘477 be withdrawn. As Moise ‘809 is not cited as teaching the claimed second via of Claims 1 and 13 and does not cure the above-noted deficiencies of Moise ‘477, Applicants further respectfully request that the rejection of Claims 5 and 6 under 35 U.S.C. 103(a) as unpatentable over Moise ‘477 in view of Moise ‘809 be withdrawn.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance, and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Eckhard H. Kuesters
Attorney of Record
Registration No. 28,870

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)